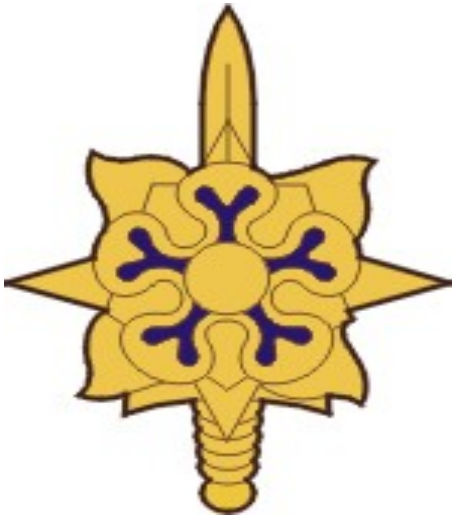
Intelligence Oversight

References

- **Army Regulation 381-10, U.S. Army Intelligence Activities**
- **The Intelligence Oversight Guide**



Enabling Learning Objectives

Advance Sheets, page 10

1. **Describe an IG's responsibilities for providing independent oversight of Army intelligence activities.**

2. **Describe the types of units and staffs involved in intelligence activities as defined in AR 381-10, Army Intelligence Activities.**

3. **Describe the recommended inspection methodology used by IGs to conduct Intelligence Oversight inspections as part of their command's OIP.**

Why is Intelligence Oversight Important to You?

- **Intelligence Oversight (IO) is the only Inspection requirement for IGs (AR 20-1, para 1-4b (3a))**

- **IO is not a primary responsibility of the IG but rather an additional level of oversight for our intelligence components**

- **IO inspections are compliance-oriented, but the findings do not result in adverse actions (unless criminal)**

Background

- **During the 1960s, Army intelligence participated with other agencies in programs that aggressively collected information about U.S. citizens who were involved in the civil rights movement or who opposed t**
- **Great public outcry resulted from this "Big-Brother" activity.**
- **President Ford established some initial rules about this type of information-gathering activity in an Executive Order.**

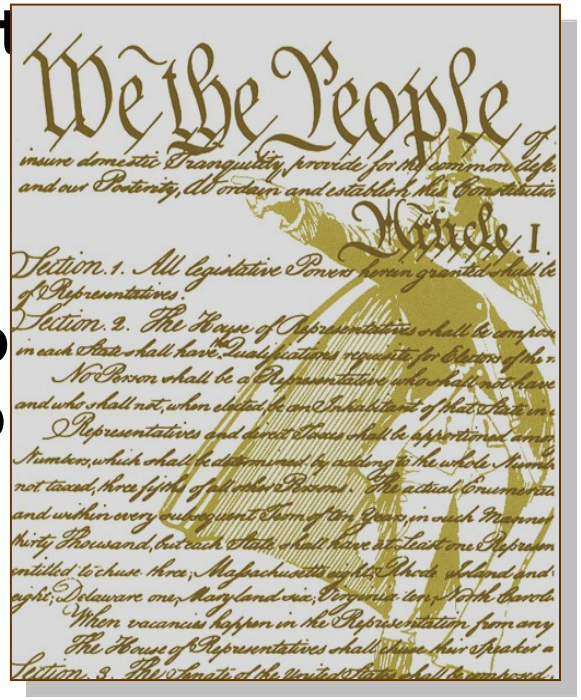
- **Each president since Gerald Ford has re-issued this Executive Order.**
- **Currently, Executive Order 12333 (2008) is the Executive Order that establishes rules and procedures for collecting data on U.S. persons.**

Purpose of Intelligence Oversight

- **Enables any Army component performing authorized intelligence functions to carry out those functions in a manner that protects the constitutional right persons.**

- **Regulates particular collection techniques to obtain informatio for foreign intelligence o counterintelligence purposes.**

AR 381-10, paragraph 1-1



Executive Order 12333

Provides procedures for . . .

- **The collection, retention, or dissemination of information on U.S. persons by intelligence components. (Procedures 2, 3, and 4)**
- **Intrusive collection techniques with the proper authority (surveillance, searches, phone taps, and so on). (Procedures 5 through 11)**
- **Assistance by intelligence components to law-enforcement. (Procedure 12)**
- **Employee Conduct and the reporting and investigating of violations. (Procedures 14 and 15)**

Executive Orders 13284 (January 2003) and 13355 (August 2004) amend EO 12333 to address the responsibilities of the Department of Homeland Security and the Director of Central Intelligence.

Army Regulation 381-10 Procedures

Intelligence Oversight

Chapter 1: General Provisions
Procedure 2: Collection of Information About U.S. Persons
Procedure 3: Retention of Information About U.S. Persons
Procedure 4: Dissemination of Information About U.S. Persons
Procedure 5: Electronic Surveillance
Procedure 6: Concealed Monitoring
Procedure 7: Physical Searches
Procedure 8: Searches and Examination of Mail
Procedure 9: Physical Surveillance
Procedure 10: Undisclosed Participation in Organizations
Procedure 11: Contracting for Goods and Services
Procedure 12: Provision of Assistance to Law Enforcement Authorities
Procedure 13: Experimentation on Human Subjects for Intelligence Purposes
Procedure 14: Employee Conduct
Procedure 15: Identifying, Investigating, and Reporting Questionable Activities
Chapter 16: Federal Crimes
Chapter 17: Support to Force Protection, Multinational Intelligence Activities, Joint Intelligence Activities, and other DoD Investigative Organizations.

Executive Order 12333

Implementing Documents

- **Department of Defense (DoD) Directive 5240.1–R is the DoD implementing document for this Executive Order.**
- **Army Regulation 381-10, U.S. Army Intelligence Activities, is the Army's implementing document.**
- **The person who can answer legal questions about this regulation is your Operational Law Attorney.**

Army Regulation 20-1 and Intelligence Oversight

- **Army Regulation 20-1 charges all Army IGs with providing independent oversight of intelligence components within their command.**

- **Every IG will inspect intelligence components and activities as part of the Organizational Inspection Program (OIP) and report any questionable activities.**

- **The commander's OIP will normally determine the frequency of intelligence oversight inspections within the command. However, IGs will ensure they inspect their intelligence components a minimum of once every two years.**

AR 20-1, paragraphs 1-4 b (3a) and 5-3

IG Responsibilities for Intelligence Oversight

ELO 1

- **Inspect intelligence components and activities as part of the Organizational Inspection Program (OIP) to ensure compliance with Army Regulation 381-10.**

- **Report any questionable activities within five days to SAIG-IO in accordance with Procedure 15.**

- **Ensure that inspected personnel are familiar with the provisions of Army Regulation 381-10 (Procedures 1 through 4 and 14) and know how to report questionable activities in accordance with Procedure 15.**

The Intelligence Oversight Guide, pages 1-6 to 1-8

Procedure 15

Under Procedure 15, IGs must . . .

- **Identify, investigate, and report *questionable* activities. Employees should report through their Commander or IG. IGs must then report all questionable activities within five days from discovery to SAIG-IO**

- **Determine whether any organization, staffs, or office not specifically identified as an intelligence component are being used for foreign intelligence or counterintelligence purposes.**

You can reach SAIG-IO at DSN 227-6698 or (703) 697-6698

Procedure 15

Applies to . . .

- **Intelligence Components or Activities**
- **<u>Any</u> organization, staff, or office used for <u>foreign intelligence or counterintelligence purposes</u>**

Procedure 15

Does not apply to . . .

- **Unit administrative activities – social rosters, Noncombatant Evacuation Operations (NEO) packets, etc.**
- **Civil disturbance activities**
- **Law-enforcement activities**
- **Criminal intelligence activities of the Provost Marshal and the CID Command**

What is a U.S. Person?

Intelligence Oversight

The term "United States person" means:

(1) A United States citizen;

(2) An alien known by the DoD intelligence component to be a permanent resident alien;

(3) An unincorporated association substantially composed of United States citizens or permanent resident aliens;

(4) A corporation incorporated in the United States that is not directed or controlled by a foreign government. A corporation or subsidiary incorporated abroad is not a U.S. person even if partially or wholly owned by a corporation incorporated in the

Intelligence Activities

Refers to all activities necessary for the conduct of foreign relations and the protection of national security pursuant to EO 12333.

1-10, page 36

Intelligence Components

What are they?

ELO 2

Intelligence Oversight

- **Office of the Deputy Chief of Staff, G-2.**
- **U.S. Army Intelligence and Security Command (INSCOM) and subordinate units.**
- **650th MI Group, Supreme Headquarters Allied Powers Europe.**
- **Senior intelligence officers and staff of Army Commands (ACOM), Army Service Component Commands (ASCC), and Direct Reporting Units (DRU), and other commands and organizations.**
- **G-2 or S-2 offices.**

Intelligence Components

What are they? *(continued)*

ELO 2

Intelligence Oversight

- **Installation, organization, or facility security offices when carrying out intelligence activities.**
- **Military intelligence units.**
- **U.S. Army Intelligence Center and other organizations conducting intelligence training.**
- **Intelligence systems developers when testing systems.**
- **Contractors of any Army entity when conducting intelligence activities.**
- **Any other Army entity when conducting intelligence activities.**

Questionable Intelligence Activity

Conduct during or related to an intelligence activity that may violate law, Executive Order, or Presidential Directive, or applicable Department of Defense or Army policy.

AR 381-10, page 37

AR 381-10 is not in itself a punitive regulation. However, people can be subject to punishment for violations of other policies or law that are reportable under AR 381-10.

SAIG-IO receives about one to two questionable-activity reports per month.

Questionable Activity

Commonly Reported Examples

Intelligence Oversight

1. **Gathering information on U.S. domestic groups not connected with a foreign power or international terrorism.**
2. **Producing and disseminating intelligence threat assessments containing U.S. person information without a clear explanation of the intelligence purpose for which the information was collected.**
3. **Storing operations and command traffic about U.S. persons in intelligence files merely because the information was transmitted on a classified system.**
4. **Collecting U.S. person information from open sources without a mission or authorization to do so.**
5. **Disseminating command force protection information on U.S. person domestic activity as an intelligence product.**
6. **Becoming directly involved in criminal investigative**

Questionable Activity

Intelligence Oversight

- **Can the S-2 keep files on Soldiers in the battalion who are members of a suspicious group?**

  No.

- **Can the MI Company conduct surveillance of the local chapter of Hell's Angels because we think that they may be a risk to our families and Soldiers?**

  CID or the Provost Marshal have regulatory authority but not the intelligence organizations.

- **Can the S-1 collect and retain information on the spouses and children of Soldiers in the battalion?**

  Yes (social roster, NEO information, etc.)

- **Can we use Low-Level Voice Intercepts (LLVI) to help local law-enforcement agencies?**

  Maybe. Check Procedure 12 and consult your Operational Law Attorney.

- **Can Military-Intelligence components collect information on the Ku Klux Klan?**

  No – as long as they are not agents of a foreign power. As a force-protection issue, the Provost Marshal or CID is better suited to collect this information.

Intelligence Oversight

Inspection Methodology

ELO 3

- **Identify your command's intelligence compo[illegible]t**
- **Involve your local Staff Judge Advocate**
- **Request a briefing from these intelligence components on their program to comply with AR 381-10.**
- **Does the unit or activity have a copy of AR 381-10 and appropriate SOPs on hand?**
- **Examine training records to determine if personnel are receiving training on AR 381-10.**
- **Quiz unit or activity members on AR 381-10 using scenarios. (See The Intelligence Oversight Guide or Army G-2 website, http://www.dami.army.pentagon.mil/offices/dami-ch/io/io_home.html)**

Intelligence Oversight

Inspection Methodology (continued)

ELO 3

- **Review unit procedures for handling all intelligence information.**
- **Physically check the intelligence files for U.S. person information.**
- **Check the unit or activity's annual review of intelligence files.**
- **Pay particular attention to files pertaining to support given to law-enforcement activities.**
- **Determine if the unit or activity knows about Procedure 15 and how to report a questionable activity.**

Changing Times

Intelligence Oversight

Evolving Guidance

Intelligence Oversight

Executive Order 12333

USA Patriot Act

New Executive Orders?

New Legislation And Laws?

Department of Homeland Security

Senate Select Committee on Intelligence

House Permanent Select Committee on Intelligence

President Obama

Attorney General Holder

Secretary Napolitano Department of Homeland Security

Intelligence Oversight

1. **IG Responsibilities**
   - **Procedures 2 through 4, 14, and 15**
2. **Intelligence Components**
3. **Inspection Methodology**